SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0562-21

T.M.,

Plaintiff-Respondent,

v.

W.C.,[1]

Defendant-Appellant.

Submitted October 12, 2022 – Decided December 6, 2022

Before Judges Messano and Gummer.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Atlantic County, Docket No. FD-01-0956-20.

Louis Charles Shapiro, PA, attorney for appellant (Louis Charles Shapiro, of counsel and on the brief).

Respondent has not filed a brief.

PER CURIAM

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[1] We use initials and pseudonyms pursuant to Rule 1:38-3(d)(14).

In June 2020, plaintiff T.M. filed a non-dissolution (FD) complaint in the Family Part against defendant W.C. seeking: a judicial determination that defendant was the biological father of her son, M.M. (Morris), who was born March 2012; child support; and counsel fees based on defendant's refusal to acknowledge paternity. Defendant filed opposition and in a supporting certification admitted having had an extramarital affair with plaintiff while she was married to M.M., Sr. (Senior), and he was married to another woman. Defendant had since moved to Florida with his family. Defendant was unsure he was Morris's father, however, and agreed to submit to a paternity test if ordered by the court.

Defendant also asserted that plaintiff and Senior, who were now divorced, had lived together with Morris during the matrimonial litigation and after the divorce was finalized. Defendant claimed Senior was Morris's "psychological parent," and he, not defendant, should be responsible for child support. Defendant speculated that even though plaintiff and Senior were no longer living together, perhaps the judgment of divorce included provisions for Senior's support of Morris.

In January 2021, defendant stipulated to paternity but otherwise preserved his challenge to any child support obligation. One month later, defendant moved

to file a third-party complaint against Senior, reasoning Senior was an indispensable party to the litigation and the Entire Controversy Doctrine (ECD) required Senior to be before the court. The proposed pleading sought an order compelling Senior to pay child support, or alternatively, to order Senior to contribute to any child support obligation the court might establish.

The judge heard oral argument on defendant's motion, permitting counsel retained by Senior to participate. She reserved decision and ordered both parties to file updated financial information. Upon receipt, the judge entered an order on April 27, 2021, that: denied defendant's motion to file a third-party complaint against Senior without prejudice; required defendant to pay $233 per week as interim child support for Morris; and set a plenary hearing date.

I.

We summarize the evidence adduced at the plenary hearing as necessary to address defendant's procedural and substantive arguments. Plaintiff, defendant, and Senior all testified.

Plaintiff and Senior were married in 2011. During their marriage, plaintiff had an extra-marital affair with defendant and became pregnant. At the time of Morris's birth, Senior presumed he was the father and was listed as Morris's father on the child's birth certificate. Prior to filing her FD complaint, plaintiff

and Senior became aware through DNA testing that Senior was not Morris's father. Although the record contains divergent accounts, the judge concluded in her written opinion that by 2015, plaintiff and Senior knew, to their surprise, that Senior was not Morris's father.

Senior filed for divorce in summer 2015, and the Family Part entered a Final Judgment of Divorce from Bed and Board (B&B Judgment) on April 27, 2016. Plaintiff, Senior and Morris lived together in the marital residence until July 2019, when the court entered a Final Judgment of Divorce (FJOD) that incorporated the terms of the B&B Judgment. During this period, plaintiff paid for none of the shelter costs, while Senior continued to be covered on plaintiff's health insurance.

The B&B Judgment expressly recognized that Morris was "biologically unrelated" to Senior and that Senior's sole responsibility was to pay a "fair" amount toward the child's daycare costs. Each party maintained separate bank accounts, although Senior agreed to provide plaintiff with current account information for the "bank account held in trust for Morris." Plaintiff and Senior moved out of the former marital home upon entry of the FJOD in 2019, after which plaintiff began her unsuccessful attempts to have defendant provide financial support for Morris.

Plaintiff testified that she works two jobs to support herself and Morris, and she did not seek child support from defendant until 2020 because she "did not want to disrupt his home and . . . thought that [she] could do . . . things on [her] own." Morris is autistic and has been diagnosed with Obsessive Compulsive Disorder, Attention Deficit Hyperactivity Disorder, and other developmental disabilities that contribute to heightened anxiety in unfamiliar social circumstances. Plaintiff was unsure how Morris would react to learning that Senior was not his biological father. Morris spends Friday and Saturday nights with Senior, although there is no formal agreement or order in place regarding parenting time.

Defendant testified that he now lives in Florida with his wife and three children for whom he is financially responsible. Defendant had no contact with plaintiff until March 2015, when she informed defendant that she wanted him to take a DNA test. Defendant had met Morris perhaps "a dozen times," and these interactions ranged from a few minutes to three-quarters of an hour.

Defendant called Senior as a witness. He testified that he enjoys spending time with Morris but would limit that time if he were ordered to be financially responsible for the child. Senior voluntarily opened an account for Morris when he was born and continued to deposit money into it after he found out Morris

was not his biological son, but Senior now had full control over the account and had used it, for example, to pay for his counsel fees in connection with this litigation. Senior no longer paid for Morris's childcare expenses and had no problem if defendant were to establish a relationship with Morris.

After considering the evidence, the judge issued a written opinion supporting her September 9, 2021 order that: declared defendant was Morris's biological father; awarded plaintiff sole physical and legal custody of Morris; ordered defendant to pay $219 per week in support of Morris commencing January 22, 2021 — the date defendant stipulated to paternity; denied plaintiff's request for counsel fees; and concluded medical support for Morris's special needs was incorporated into the child support order via calculations the judge made pursuant to the Guidelines.

II.

Defendant argues that pursuant to applicable Court Rules, N.J.S.A. 9:17-47, and the ECD, the judge should have granted his motion to file a third-party complaint against Senior. Defendant also contends equitable principles of estoppel and laches barred plaintiff from seeking child support from him. Lastly, defendant argues the judge erred by not concluding Senior was Morris's

"psychological parent" and not ordering Senior to contribute to the child's support. We have considered these arguments in light of the record and affirm.

A.

In the comprehensive written decision that accompanied her order, the judge explained her decision denying defendant's motion to add Senior as a third-party defendant. The judge noted Senior was not an "indispensable party" because: 1) defendant had admitted paternity; 2) under the B&B Judgment, Senior had no financial obligations to Morris, except for a "small carveout for work-related . . . expenses"; 3) defendant was able to obtain all financial information "regarding [Senior's] relationship with the [c]hild or the contents of the account held in trust for the [c]hild referenced in the [B&B Judgment which] could be examined through subpoena and testimony . . . at the plenary hearing"; and 4) if necessary, the court could sua sponte add Senior as a third-party defendant. The judge reasoned, Senior "had no rights or interests affected by this litigation and was not an indispensable party."

Defendant first argues that Senior was an indispensable party, pursuant to Rule 4:28-1(a), which provides:

> A person . . . shall be joined as a party to the action if (1) in the person's absence complete relief cannot be accorded among those already parties, or (2) the person claims an interest in the subject of the action and is so

> situated that the disposition of the action in the person's absence may either (i) as a practical matter impair or impede the person's ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or other inconsistent obligations by reason of the claimed interest. If the person has not been so joined, the court shall order that the person be made a party.

"Whether a party is indispensable is fact sensitive." Int'l Brotherhood of Elec. Workers Loc. 400 v. Borough of Tinton Falls, 468 N.J. Super. 214, 225 (App. Div. 2021).

Indispensability, in the context of Rule 4:28-1(a), "is usually determined from the point of view of the absent party and in consideration of whether or not his rights and interests will be adversely affected." Pressler & Verniero, Current N.J. Court Rules, cmt. 3.1 on R. 4:28-1 (2023) (emphasis added). But the interests of parties already in the litigation are not absent from consideration. See, e.g., Int'l Brotherhood of Elec. Workers, 468 N.J. Super. at 225 ("[A] party is not truly indispensable unless he has an interest inevitably involved in the subject matter before the court and a judgment cannot justly be made between the litigants without either adjudging or necessarily affecting the absentee's interests." (emphasis added) (quoting Toll Bros., Inc. v. Twp. of W. Windsor, 334 N.J. Super. 77, 90–91 (App. Div. 2000)). "Even if the court is mistaken in its decision to proceed in the absence of an interested person, it does not by that

token deprive itself of the power to adjudicate as between the parties already before it . . . ." Pressler & Verniero, cmt. 1 to R. 4:28-1; accord Raynor v. Raynor, 319 N.J. Super. 591, 602 (App. Div. 1999); Ross v. Ross, 308 N.J. Super. 132, 144 (App. Div. 1998).

In both Raynor and Ross, cases involving financial interests asserted by non-parties in actions brought in the Family Part, albeit not involving child support, we concluded it was error for the trial court not to have joined the non-party appellant to the litigation. 319 N.J. at 602; 308 N.J. at 143. However, we specifically noted that in both cases, the non-party actively participated in the trial court proceedings and suffered no prejudice. Raynor, 319 N.J. Super. at 603–04; Ross, 308 N.J. Super. at 147. The same is true here.

As the trial judge noted, defendant was able to call Senior as a witness, inquire about his past and present relationship with Morris, and obtain all financial data regarding the B&B Judgment and any contributions Senior had made to Morris's support thereafter. Defendant fails to explain how he was prejudiced in any way by the judge's denial of his motion to file a third-party complaint against Senior, particularly because, as we explain below, the judge addressed defendant's central argument, that Senior was a psychological parent to Morris and required to pay support. Additionally, we note that unlike the

appellants in Raynor and Ross, the absent non-party here, Senior, sought no relief in the Family Part. We conclude, therefore, that even if the judge should have joined Senior as a party to the litigation, the judge had jurisdiction over the two parties joined in the litigation, was fully capable of addressing the issues raised by plaintiff's complaint and defendant's opposition, and defendant suffered no prejudice.

It follows that we need not address defendant's alternative argument that joinder of Senior was required by the ECD, which lacks sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).[2]

B.

As best we can discern, in Point II of his brief, defendant argues that plaintiff should be estopped from seeking support from defendant because she

[2] Defendant also cites N.J.S.A. 9:17-47 as requiring Senior to be added as a party. That statute, which the judge did not address, provides in relevant part that in actions under the Parentage Act: "[E]ach man presumed to be the father under [N.J.S.A. 9:17-43], each man alleged to be the natural father, any one whose name appears on the birth certificate, and anyone who has attempted to file an acknowledgment under [N.J.S.A. 9:17-43] . . . shall be made parties . . . ." (Emphasis added). However, the Parentage Act creates a cause of action "for the purpose of determining the existence or nonexistence of the parent and child relationship." N.J.S.A. 9:17-45(a). Here, defendant conceded paternity during the litigation.

waited several years to bring the complaint after first discovering that defendant was Morris's father. Defendant also argues that the doctrine of laches and plaintiff's "unclean hands" bar the court's imposition of a support obligation on defendant.[3]

Laches has been applied to bar a claim where there is "unexplainable and inexcusable delay in enforcing a known right whereby prejudice has resulted to the other party because of such delay." Cnty. of Morris v. Fauver, 153 N.J. 80, 105 (1998) (quoting Dorchester Manor v. Borough of New Milford, 287 N.J. Super. 163, 171 (App. Div. 1994)). Several factors to be considered when determining whether to apply laches include: length of the delay; reasons for the delay; and "changing conditions of either or both parties during the delay." Lavin v. Bd. of Educ. of Hackensack, 90 N.J. 145, 152 (1982) (citing Pavlicka v. Pavlicka, 84 N.J. Super. 357, 368–69 (App. Div. 1964)). Moreover, "[w]hether laches should be applied depends upon the facts of the particular case

[3] In a single sentence in Point II, defendant contends "bringing [Senior] into th[e] case would have served to assist the trial court in according more complete relief to the child and the parties." While we have already rejected the substance of the argument, "[t]his cursory discussion did not properly present the issue for our consideration or afford an adequate opportunity for" a response. Mid-Atl. Solar Energy Indus. Ass'n v. Christie, 418 N.J. Super. 499, 507 (App. Div. 2011).

and is a matter within the sound discretion of the trial court." Mancini v. Twp. of Teaneck, 179 N.J. 425, 436 (2004) (alteration in original) (quoting Garrett v. Gen. Motors Corp., 844 F.2d 559, 562 (8th Cir. 1988)).

The judge found that plaintiff's delay in seeking child support from defendant was explainable and rational. Plaintiff sought child support once she began living on her own with Morris after her divorce and was struggling financially to afford the cost of childcare and various forms of therapy for her son who has special needs. Plaintiff's attempts at negotiation with defendant never materialized into an agreement.

The judge concluded that although defendant "may not like that he is now being called upon to provide financial support for his own child, he has suffered no harm from the delay. To the contrary, [defendant] benefitted for years in not taking responsibility for his child." We agree with the judge's reasoning.

The essence of the "unclean hands" doctrine, which is "discretionary on the part of the court," Heuer v. Heuer, 152 N.J. 226, 238 (1998), is that "a court should not grant relief to one who is a wrongdoer with respect to the subject matter in suit," Faustin v. Lewis, 85 N.J. 507, 511 (1981). The doctrine "calls for the exercise of careful and just discretion in denying remedies where a suitor is guilty of bad faith, fraud or unconscionable acts in the underlying

transaction." Pellitteri v. Pellitteri, 266 N.J. Super. 56, 65 (1993) (citing Untermann v. Untermann, 19 N.J. 507, 517–18 (1955)).

Defendant alleges plaintiff repeatedly represented that she would not seek child support from him. Even if true, plaintiff's conduct would not rise to the level of unconscionable conduct barring relief. More importantly, plaintiff could not bargain away Morris's right to support, because "the right to support belongs to the child," not the parent. Martinetti v. Hickman, 261 N.J. Super. 508, 512 (App. Div. 1993). In an action to determine the obligation of parents to financially support their children, "[w]hether or not [a parent] has a continuing obligation to support the child must be based on an evaluation of the child's need and interests and not upon the conduct of the plaintiff." Ibid. (emphasis added).

C.

Lastly, defendant argues the judge should have ordered Senior to pay child support because where a stepparent is found to be the "psychological parent" of a child, courts have compelled that person to pay child support after dissolution of the marriage instead of ordering the biological parent to do so. However, it is axiomatic that a biological parent is the primary source for support of a child,

and the duty cannot be switched to a stepparent except in limited circumstances. Miller v. Miller, 97 N.J. 154, 169 (1984).

A stepparent may become responsible, or, more accurately, equitably estopped from denying support, only when the stepparent's conduct actively interferes with support for the child from his or her biological parent. Ibid. Equitable estoppel is "a safety net for the child whose stepfather has affirmatively interfered with his right to be supported by his natural father." J.W.P v. W.W., 255 N.J. Super. 1, 3 (App. Div. 1991).

Here, the judge found that Senior was a "psychological[-]type father figure" to Morris and recognized the bond between the two. However, the judge reasoned that even if Senior is a "psychological parent," the Court's decision in Miller posits a general rule that stepparents will not be liable beyond the dissolution of their marriage, and defendant did not meet his burden to trigger an exception on equitable estoppel grounds. 97 N.J. at 162–63. We agree.

In Miller, the Court clarified the standard for applying principles of equitable estoppel and held that a stepparent must make some representation of support to either the child or the natural parent before he or she can be obligated to continue that support. Id. at 167. There, the stepfather supported the children of his wife for seven years, as their father, and not only opposed visitation with

the natural father but prohibited such visitation. Id. at 160. He further rejected all offers from the natural father to contribute to the support of the children. Ibid. The Court held where "the stepparent's conduct actively interfered with the children's support by their natural parent," a permanent support obligation may be imposed on a stepparent. Id. at 167.

An equally-divided Court applied Miller's principles in M.H.B. v. H.T.B., 100 N.J. 567 (1985). There, the parties had two children together, but the mother had a third child with another man. The stepfather, after learning that the third child was not his own, continued to hold himself out as the child's father and sought custody of the child. Id. at 568. The couple executed a separation agreement incorporated in the final judgment of divorce, acknowledging all three children were considered born of the marriage and all three were to receive child support from the stepfather. Id. at 570. Writing for the three justices affirming our judgement, Justice Handler concluded that the stepfather was equitably estopped from denying his duty to provide child support for the child that was not his, concluding the stepfather's actions amounted to "a voluntary and knowing course of conduct with respect to [the child] which constituted in its purpose and effect an affirmative representation that he was her natural father." Id. at 576.

Critically, in the above cases, support was sought from a stepfather. However, in J.R. v. L.R., the husband/stepfather raised the child as his own daughter and did not learn she was not his biological child until the mother told him nine years later. 386 N.J. Super. 475, 478 (App. Div. 2006). The stepfather moved for paternity testing which revealed he was not the biological father. Id. at 479.

After genetic testing revealed him to be the father, the child's natural father argued the results should be excluded and because the stepfather was the child's "psychological parent," the stepfather should be equitably estopped from denying sole responsibility for her support. Id. at 483. We found no basis to apply equitable estoppel and excuse financial participation by the natural father because the stepfather had not interfered with a relationship between the child and the natural father. Id. at 483–84. We rejected the natural father's assertion that it was inequitable to require him to be financially responsible for the child after so much time had passed before the mother made him aware of the child's existence stating,

> [R]eality cannot be ignored, and the reality is that [natural father] has a daughter who is need of support and is legally entitled to it. As her father, [he] is responsible for her proper support to the extent he is financially able, even though there is no relationship between them.

[Id. at 484 (citing N.J.S.A. 9:17-55).]

In J.W.P. v. W.W., the plaintiff mother had an affair with the defendant biological father and became pregnant while still married to her husband. 255 N.J. Super. 185, 186–89 (Ch. Div. 1990), aff'd. o.b., 255 N.J. Super. 1 (App. Div. 1991). Although she knew he was not the father, the plaintiff listed her husband as the child's father on the birth certificate. Id. at 188. The trial court ordered the defendant to pay child support after a paternity test revealed he was the father; defendant challenged the order arguing, in part, that because the plaintiff's husband had been supporting the child, he should not be required to pay support based on equitable estoppel grounds. Id. at 188–90.

The trial judge rejected the argument, explaining:

> [T]he equitable estoppel doctrine articulated in Miller has been applied in cases in which a custodial mother has sought continued support for her children from their stepfather. Its application has consistently served the compelling need of the child to receive continuing financial support when the child has been effectively foreclosed from obtaining support from a natural parent by the stepfather's conduct. The doctrine was not intended to compromise the natural parent's obligation. Indeed, the Supreme Court emphasized that the natural parent remained the primary recourse for child support.
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> [Id. at 190–91 (citations omitted).]

On appeal, the defendant natural father raised the same arguments, which we rejected on the strength of the trial court's reasoning. J.W.P. 255 N.J. Super. at 4. We noted, "[a]ll that occurred was laudable behavior by [the husband] who attempted to create a loving atmosphere for [child]." Id. at 3.

Similarly, here, the trial judge found Senior "should not be punished for attempting to provide a loving atmosphere for [Morris]," and defendant should not be permitted "to take advantage of the circumstances and largess of [Senior]." We agree.

Affirmed.